U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-A-F-

DATE: NOV. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as the fiancé(e) of a United States citizen. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Director denied the nonimmigrant visa petition, finding that the Petitioner was convicted of a specified offense against a minor and failed to demonstrate that he posed no risk to the safety and well-being of the Beneficiary. On appeal, the Petitioner contends that the denial was based on an abuse of discretion and applied the wrong legal standard and, further, asserts that he poses no threat to the Beneficiary.

I. APPLICABLE LAW

Section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification to an alien who, in pertinent part:

> is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.

Section 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii), describes, in pertinent part:

> (I) . . . a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition . . . is filed.[1]

[1] The Secretary has delegated to U.S. Citizenship and Immigration Services (USCIS) the authority to determine whether or not a petitioner convicted of a specified offense against a minor poses no risk to the beneficiary. *See* Department of Homeland Security (DHS) Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003).

> (II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006 [Adam Walsh Act or AWA].

The Adam Walsh Act was enacted to protect children from sexual exploitation and violent crimes, to prevent child abuse and child pornography, to promote Internet safety and to honor the memory of Adam Walsh and other child crime victims. Pub. L. 109-248, §§ 2, 102, 501 (July 27, 2006).

Sections 402(a) and (b) of the Adam Walsh Act amended sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the Act to prohibit U.S. Citizens and lawful permanent residents who have been convicted of any "specified offense against a minor" from filing a family-based visa petition on behalf of any beneficiary, unless the Secretary of the Department of Homeland Security determines in his sole and unreviewable discretion that the petitioner poses no risk to the beneficiary of the visa petition. Section 111(7) of the Adam Walsh Act defines "specified offense against a minor" as follows:

> The term "specified offense against a minor" means an offense against a minor that involves any of the following:
>
> (A) An offense (unless committed by a parent or guardian) involving kidnapping.
> (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
> (C) Solicitation to engage in sexual conduct.
> (D) Use in a sexual performance.
> (E) Solicitation to practice prostitution.
> (F) Video voyeurism as described in section 1801 of title 18, United States Code.
> (G) Possession, production or distribution of child pornography.
> (H) Criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct.
> (I) Any conduct that by its nature is a sex offense against a minor.

Section 111(14) of the Adam Walsh Act defines the term "minor" as an individual who has not attained the age of 18 years.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129F, Petition for Alien Fiancé(e), on May 29, 2009. The Director issued a Notice of Intent to Deny (NOID) on October 22, 2012 because the evidence of record indicated that the Petitioner was convicted in Illinois of committing Aggravated Criminal Sexual Abuse in violation of 720 ILCS 5/12-16(c)(1)(i) for fondling the breast and vagina of his [redacted] year old daughter. The Director indicated that the petition would be denied unless the Petitioner submitted evidence that he was not convicted of any "specified offense against a minor" as defined in section 111(7) of the Adam Walsh Act, and/or established beyond any reasonable doubt that he poses no risk to the Beneficiary of the visa petition. The Director provided the Petitioner with a detailed list of acceptable evidence.

In response to the Director's NOID, the Petitioner submitted court records showing he was charged in connection with an offense committed between [redacted] and [redacted] 1996. He did not contest having been convicted of a "specified offense against a minor" pursuant to the Adam Walsh Act (AWA offense), but rather sought to establish that he poses no risk to his fiancée. The Director determined that the Petitioner, having been convicted of an AWA offense, failed to demonstrate that he poses no risk to the safety and well-being of the Beneficiary of the visa petition and denied the petition accordingly.

On appeal, the Petitioner does not contest being convicted of an AWA specified offense.[1] He contends, rather, that despite his AWA conviction record, he poses no risk to his fiancée. We review these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In these proceedings, the Petitioner bears the burden of demonstrating, beyond any reasonable doubt, that he poses no risk to the Beneficiary.[2] Upon a full review of the record, we find that the Petitioner has overcome the basis for the denial.

III. ANALYSIS

The record of conviction reflects that on [redacted] the Petitioner pleaded guilty to the aforementioned sexual offense under Illinois law. His arrest and conviction occurred after he self-reported the abuse during mental health counselling for depression. The disposition reflects that the Petitioner was sentenced to 90 days in jail (with credit for time served), 90 days home confinement with electronic monitoring after the jail sentence, and a variety of constraints on liberty imposed,[3] including being ordered to have no contact with females under 18, remain at least 500 feet away from childcare facilities and elementary schools while in session, undergo psychological counselling, and pay the victim's counselling expenses. At the time of the Petitioner's conviction, the criminal statute stated, in pertinent part:

> (c) A person commits aggravated criminal sexual abuse if:
>
> (1) that person is 17 years of age or over and:
> (i) commits an act of sexual conduct with a victim who is under 13 years of age ....

[1] Citing U.S. Supreme Court precedent, the Petitioner also contends that the Adam Walsh Act infringes upon his right to marry. We note that the petition denial at issue does not address his right to marry, but only his ability to procure a K visa. The Petitioner remains able to travel to the Philippines -- as he has done previously to meet his fiancée -- and marry the Beneficiary there or elsewhere.

[2] *See Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006*, USCIS Memorandum, 5-7 (Feb. 8, 2007).

[3] The record shows the Petitioner was discharged from probation after fully complying with all conditions as of [redacted] 2001. Further, he fulfilled obligatory sex offender registration, as ordered, until expiration of the judicially-mandated, ten-year term.

The record contains the Petitioner's admission that he fondled the breast and genitalia of his then year old daughter. The Director therefore found the offense for which the petitioner was convicted to constitute a "specified offense against a minor" as defined under section 111(7)(I) of the Adam Walsh Act to include any conduct that by its nature is a sex offense against a minor. Further, the Director determined the Petitioner did not submit evidence in response to the NOID demonstrating that the conviction was not for a specified offense against a minor under the AWA.

To support the claim he poses no risk to the Beneficiary, a 43-year-old female, the Petitioner submitted the judicial record showing compliance with all requirements of his sentence, letters of support from the victim and other family members, and a sex offender evaluation dated August 11, 2010 from the licensed clinical social worker who treated him from 1997 to 2001 and whom the Petitioner contacted periodically for advice and counsel thereafter. The record shows that the Petitioner admitted to his treating psychologist having sexually abused his daughter, acknowledged and took responsibility for his actions, pled guilty to the resulting criminal charges, complied fully with the sentence imposed, completed a sex offenders' program, gained the support of friends and family by admitting his criminal behavior, maintained employment during this period,[4] and received the forgiveness of the victim and two other daughters (all now adults), and that of his ex-wife.

This therapist noted that the Petitioner acknowledged his criminal behavior, took responsibility for his actions, and successfully completed treatment. Specifically, the psychologist who treated the Petitioner from 1997-2001 during four years of Sex Offender Specific Treatment issued a Sex Offender Specific Evaluation on August 8, 2010, concluding that the Petitioner represented "no appreciable risk to his fiancée." The psychologist's conclusion is based on two hours of interview with the Petitioner spanning three office visits, a conversation with the Beneficiary, a number of quantitative written exams, including the STATIC-99 Actuarial Risk Assessment Form[5] and Multi-Phasic Sex Inventory, the Petitioner's lack of an arrest record since the events giving rise to his conviction, and the Petitioner's ongoing support from friends and family. "As a result of this extensive clinical/actuarial risk assessment," concludes the psychologist, "[the Petitioner] can be seen as a very low risk to reoffend sexually against children."

We observe that the psychologist employed several approaches to determine the Petitioner's recidivist tendencies, including interviewing both the Petitioner and Beneficiary, administration of numerous exams and inventories, and professional judgment based on a therapist-patient relationship dating to 1997. The evaluation notes that the Petitioner was himself a victim of sexual abuse as a first grader and again as a -year-old, has a family history of mental illness and alcoholism, and recognizes his past problems. Therefore, he has employed relapse prevention skills learned in counselling and reached out to the therapist for ongoing advice and counsel. In addition, the record

[4] We note that his employment required the Petitioner to request, on several occasions, permission to leave Illinois, and that he did so each time.

[5] The Static-99 was created in 1999 by combining items in two prior sex offender risk assessment measures published, respectively, in 1997 (Rapid Risk Assessment for Sex Offence Recidivism, or RRASOR) and 1998 (Structured Anchored Clinical Judgement [sic], or SACJ) by the Static-99's developers. *Static 99: Improving Actuarial Risk Assessments for Sex Offenders*, R.K. Hanson and David Thornton.

contains evidence the Petitioner has mended his relationships with his three daughters and ex-wife to such an extent that all have provided statements of support, with his victim specifically forgiving her father and asking that he be permitted to move forward and build a life with his fiancée. The therapist notes that the Beneficiary is well aware of the seriousness and consequences of the Petitioner's offense, but that her love and support for the Petitioner appear genuine. She herself states that she does not believe the Petitioner represents any danger to her, and that she recognizes they will not have children in the household.

Besides the therapist's evaluation finding the Petitioner presents with no appreciable risk to the Beneficiary, the record contains supportive letters from people aware of his history that attest to his integrity and request that he be given a second chance. While the Director concluded that these documents failed to establish the Petitioner posed no risk to the well-being of the Beneficiary, we find that evidence sufficient to show that his past sexual offenses do not indicate a safety risk to his fiancée, particularly in light of the findings in the sex offender specific evaluation and the lack of any arrests or allegation that he has re-offended since his 1997 conviction.

The record reflects that the Petitioner self-reported the sexual abuse of his daughter to a therapist he was seeing for depression, apparently out of feelings of guilt and remorse. As a result he was reported to authorities and convicted of sexual abuse. In seeking mental health treatment and reporting the abuse, he acknowledged that his behavior was wrong, displayed awareness that he needed help, and exhibited a desire to ensure he would not engage in such behavior again. He completed Sex Offender Specific Treatment and otherwise complied with the terms of his probation, established a support network of family and friends, and has been gainfully employed with the same employer for nine years.

While not excusing the Petitioner's crime, the detailed psychological evaluation contains an assessment of the Petitioner's low recidivism risk and supports his claim that he poses no risk to an adult female with whom he has a long-term relationship and to whom he has fully disclosed his criminal history.

IV. CONCLUSION

The burden of proof in these proceedings rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden. Consequently, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of C-A-F-*, ID# 12442 (AAO Nov. 10, 2015)